

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08cv367**

HIGH VOLTAGE BEVERAGES, LLC,)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
THE COCA-COLA COMPANY,)	
)	
Defendant and Counter)	
Claimant,)	
)	
Vs.)	
)	
BRAND NAME MANAGEMENT, INC.;)	
and OWEN RYAN,)	
)	
Counter Defendants.)	
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THIS MATTER is before the court on defendant’s Motion for Relief Pursuant to Rule 56(f) (#211). In this motion, defendant seeks to delay consideration of counter-defendants’ Motion for Partial Summary Judgment (#199) on the defendant’s counterclaims for champerty and maintenance. For cause, defendant argues that it has not received everything it needs in discovery to fully respond to counter-defendants’ motion. Rule 56(f), Federal Rules of Civil Procedure, provides as follows:

(f) When Affidavits Are Unavailable.

If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) deny the motion;
- (2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or
- (3) issue any other just order.

Fed.R.Civ.P. 56(f).

For the reasons discussed at the hearing, this motion will be allowed and defendant will be allowed until September 25, 2010, to file a supplemental five-page brief supported by any additional evidentiary materials defendant believes are appropriate. Counter-defendants will be allowed until October 1, 2010, to file a five-page response with any additional evidentiary materials they believe are both appropriate and responsive, and there shall be no reply.

ORDER

IT IS, THEREFORE, ORDERED that defendant's Motion for Relief Pursuant to Rule 56(f) (#211) is **GRANTED**, and defendant is allowed until September 25, 2010, to file a supplemental five-page brief supported by any additional evidentiary materials defendant believes are appropriate. Counter-defendants are allowed until October 1, 2010, to file a five-page response with any additional evidentiary materials they believe are both appropriate and responsive, and there shall be no reply.

Signed: September 22, 2010

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

